D.B. CIVIL SPECIAL APPEAL (W) NO.342/2005

Pankaj Kumar & Ors.

Vs.

Chief Executive and Director, REDA & Ors.

22.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. Sanjeet Purohit, for the appellants.
None present for the respondents.

Heard learned counsel for the appellants. No one appears for the respondents despite service.

The learned counsel for the appellants urges that the order of learned Single Judge is founded on the premise that the finding of the learned Labour Court that the project on which the appellants were serving had come to an end and therefore, no relief can be granted to them in respect of termination of their services. This premise, it is pointed out by the learned counsel for the appellants is contrary to the award itself as the issue has not been decided by the learned Labour Court at all. Undoubtedly, it was one of the argument raised by the respondent employer but no finding was recorded thereon.

From perusal of the award we find that

the contention of the learned counsel for the appellants appears to be correct. After recording all the rival contentions including the contention of the employer that the appellants were not workmen within the meaning of Section 2 (S) of the Industrial Disputes Act, 1947, learned Labour Court recorded only the finding that they had come within the definition of workman. However, no finding on any of other arguments raised by either side has been recorded but the award has been made on the basis of advertisement issued in the Rajasthan Patrika in which the post of 26 Mechanic-cum-Lower Divisional Clerk were shown to exist and advertisement for filling up the posts by persons like the appellants were to be made on priority basis and relying on that advertisement about which there was no dispute and which was issued by the Government under Rural Development and Panchayat Department of the State, the award was made that in terms of the aforesaid Government direction, the workman before the learned Labour Court may be entitled to be considered on priority basis against those vacancies and they may be so appointed on priority basis.

Considering that aspect of the direction and the fact that if the award is set-aside and the matter is remitted back to the learned Labour

Court, which is likely to take further time, learned counsel for the appellants seek permission to withdraw the writ petition with liberty to pursue his remedy for implementation of the award for seeking employment on priority basis in terms of the award unaffected by the findings of the learned Single Judge.

In these circumstances, the appeal is dismissed as withdrawn with liberty to move the employer to implement the award about their engagement on priority basis unaffected by any finding recorded by the learned Single Judge in the judgment under appeal.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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